* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : March 8, 2007
% Date of decision: April 18, 2007

\+ W.P.(C) 3917/2003

\# DECENT PROPERTIES PVT. LTD. ..... Petitioner
! Through Mr. B.B. Jain, Advocate

versus

$ NDMC ..... Respondent
^ Through Mr. P.C. Sen, Advocate

**CORAM:**
* **HON'BLE DR. JUSTICE S. MURALIDHAR**

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

**:Dr. S.Muralidhar J.**

1. This petition challenges an assessment order dated 27.7.2001 passed by the New Delhi Municipal Council (`NDMC') fixing the rateable value of the property at 4A Prithvi Raj Road, New Delhi at Rs. 19,38,583 less 10 per cent. It also challenges a demand dated 10.1.2003 issued by the NDMC requiring the payment of Rs. 38,22,956 together with the penalty of Rs. 7,64,591 constituting 25 per cent of the demand.

2. The property at 4, Prithvi Raj Road/3, Aurangzeb Road was in

the name of late Shri Bijunanda Patnaik. It came to be divided into four separate blocks, i.e., 4 and 4-A Prithvi Raj Road and 3 and 3-A Aurangzeb Road. The Petitioner purchased one of the blocks, i.e., 4-A Prithvi Raj Road from Shri Biju Patnaik by an agreement to sell dated 13.9.1984. On 3.1.1989 the Petitioner paid Rs. 4 lakhs as part compounding charges to the Respondent. It is stated that on 6.12.1993 a notice was issued by the NDMC to the Petitioner seeking details to enable the NDMC to calculate the property tax in respect of the property at 4A Prithvi Raj Road..

3. In the meanwhile the NDMC continued to assess the entire property as if it remained undivided and raised demands on that basis. This was challenged by Sri Prem Patnaik, to whose share the property at 3 Aurangzeb Road had fallen, by Writ Petition (Civil) No. 982/2000 (***Prem Patnaik v. NDMC***). By an Order dated 17.4.2000, this Court took note of the fact that the said petitioner (Sri Prem Patnaik) had entered into a collaboration agreement by virtue of which the builder was to construct flats to be sold to outsiders, and a certain portion of the property was to be retained by Sri Prem Patnaik, and in respect of which he was seeking mutation. Reference was made to proviso to Section 78 of the New Delhi Municipal Council Act, 1994 (`NDMC Act') which enables the separate assessment of the

part of a property. In the said order, the consent of the NDMC to the mutation of the property in the name of Shri Prem Patnaik was recorded. Accordingly this Court directed the NDMC to proceed to mutate the property in question "in the name of the applicant/applicants/owners/occupiers, if entitled in accordance with law and subject to payment of all arrears by the concerned person in respect of such properties and on completion of all formalities."

4. Purporting to that act on the basis of the Order dated 17.4.2000, the NDMC issued the impugned assessment order dated 27.7.2001 fixing the rateable value of the property at 4A Prithvi Raj Road, New Delhi, the portion purchased by the Petitioner, at Rs. 19,38,583 less 10 per cent. The assessment order indicates, against the property at 4A Prithvi Raj Road, the name of the owner as "Owner c/o Decent Properties Pvt. Ltd." The contention of the Petitioner is that this fixation of the rateable value was made without prior notice to the Petitioner as was statutorily required under Section 92 (2) of the New Delhi Municipal Council Act, 1994 ('NDMC Act'). It is stated that the notice was only issued, if at all, to the previous owner and this could not constitute notice to the Petitioner.

5. The other contention is that in terms of Section 74 (4) of the

NDMC Act a person, until he gives notice of transfer or "until the transfer has been recorded in the Chairperson's book," will be liable for all penalties, property tax etc. It is stated that the Respondent NDMC being aware of the transfer in name of the Petitioner, as is evident from the notices issued by it on 6.12.1993 to the Petitioner, and accepting payments of compounding charges from the Petitioner way back on 3.1.1989, was certainly aware of the fact of transfer of the property in question in favour of the Petitioner, and in that view of the matter it was required to issue a notice to the Petitioner as transferee before finalising the assessment.

6. The counter affidavit filed by the NDMC does not dispute that the portion in question has been purchased by the Petitioner. However, it is contended that it was the duty of the previous owner to inform the NDMC that the property has been sold and that the NDMC was not expected to go around investigating as to whom the property or a portion thereof had been sold. It is accordingly contended that "a notice given to the owner is sufficient and the purchaser of the property cannot dispute the assessment of property tax on the ground that he had not received any notice for fixing the rateable value." It is then contended that the impugned assessment order dated 27.7.2001 was passed in accordance with the directions of this Court dated

17.4.2000 and that “since the assessment was finalised much prior in 1989 after giving notice under Section 65 of the Punjab Municipal Act in the name of the recorded owner, who has not filed any objections to the proposed assessment, there was no need to issue a fresh notice in the name of the new purchaser.” It is pointed out that the other purchasers of the bifurcated portions, of a larger size, had not objected to the assessment. Reliance is placed by the Respondent on the judgment of the Hon'ble Supreme Court in ***MCD v. Trigon Investment & Trading Pvt. Ltd***. (1996) 3 SCC 630 where it has been held that “unless the transferee's name is recorded as `owner' or as the person primarily liable, the Municipality cannot be found fault with for not sending relevant notice to the transferee.”

7. Mr. B.B. Jain, the learned counsel for the Petitioner while reiterating the above submissions sought to distinguish the judgment of the Hon'ble Supreme Court in ***Trigon Investment & Trading Pvt. Ltd***. (supra). He submitted that in the ***Trigon*** case (supra) there was no notice of any subsequent purchase given to the NDMC whereas in the present case the NDMC was aware of the subsequent purchase of the property by the Petitioner. On the non-exhaustion of the available remedy, Mr. Jain points out, the principal ground of challenge here is a violation of the principles of natural justice and the remedy under

Article 226 is not precluded in such instances. He further submits that all that he is demanding at this stage is for a compliance with the principles of natural justice by the Respondent before finalising the assessment in accordance with law. He states that he will abide by whatever time bound directions are given by the Court for this purpose.

8. Mr. P.C. Sen, the learned counsel appearing for the NDMC submits that as far as the NDMC is concerned, the mutation of a portion of the property in the name of the Petitioner is yet to take place and since the Petitioner is not the recorded owner, he cannot challenge the assessment. The mere fact that a letter has been addressed to the Petitioner cannot mean that the requirement of giving notice under Section 74 has been complied with. The bill dated 8.10.2001 has also been raised in the name of "Owner c/o M/s Decent Properties Pvt. Ltd." and thus in the NDMC's records, the Petitioner is not the owner of the property. It is thus submitted that it is not open to the Petitioner to reopen a concluded past assessment and reliance is placed on the judgment of this Court in ***NDMC v. Rohit Jain*** 102(2003) DLT 391. Further it is contended that the arrears of tax as a result of the finalised assessments form part of the payment now raised and that could not be challenged by the Petitioner who was the

subsequent transferee.

9. In the first place, it requires notice that although a contention has been raised by the Respondent that the Petitioner should avail of the alternative remedy available under the NDMC Act, that objection is not reiterated in the written submissions. The Respondent NDMC, in its written submissions, is seeking to rely on a judgment of this Court in ***NDMC v. Rohit Jain*** to contend that a past assessment cannot be challenged by a subsequent transferee who does not get property mutated in his name. A closer reading of that judgment in ***Rohit Jain*** case (supra) shows that the specific contention raised by the NDMC there was that the arrears of tax although shown in the bill, was not a levy against which an appeal could have been filed by the purchaser under Section 115 of the NDMC Act. That contention was accepted by the Court. On the facts of that case it was found that the assessment had been finalised even prior to the purchase of the property and that the subsequent purchaser failed to intimate the Petitioner of the change in ownership, prior to such finalisation, cannot seek to reopen that finalised assessment. This Court in ***Rohit Jain*** case (supra) followed the decision of the Supreme Court in ***Trigon Investments*** (supra) which was dealing with the requirement of giving notice under Section 126 of the Delhi Municipal Corporation

Act, 1957 (`DMC Act'). A reading of the judgment in ***Trigon Investments*** (supra) shows that neither the owner nor the purchaser informed the MCD of the transfer of the property in the name of the subsequent purchaser. In those circumstances, it was held that there is no obligation on the MCD to issue a prior notice to the subsequent purchaser before finalising the assessment.

10. In light of the above decision, it appears that the question of non-exhaustion of alternative remedy by the Petitioner here, does not really arise for consideration in the present petition. If the petitioner is right in its contention that there has been a violation of the principles of natural justice, then indeed the remedy under Article 226 would be available to the Petitioner notwithstanding the fact that an alternative statutory remedy exists. Moreover, since the Respondent questions the locus of the Petitioner that issue anyway has to be decided even if the Petitioner were to be relegated to the statutory remedy.

11. Section 72(2) of the NDMC Act makes it mandatory that “before making any amendment under sub-section (1), the Chairperson shall give to any person affected by the amendment, notice of not less than one month that he proposed to make the amendment and consider any

objection which may be made by such person." The amendment in question is the revision of the rateable value as finalised from time to time in the "assessment list". Section 74 deals with notice of transfers and makes it obligatory for a person who is liable for the payment of property tax, and the person to whom the same is transferred, to give notice of such transfer in writing to the Chairperson within three months after the execution of the instrument of transfer. The consequences of not giving such notice is spelt in Section 74(4) which is reproduced as under:

> "(4) Every person who makes a transfer as aforesaid without giving such notice to the Chairperson shall, in addition to any penalty to which he may be subjected under the provisions of this Act, continue to be liable for the payment of property tax, from time to time payable in respect of the land or building transferred until he gives such notice or until the transfer has been recorded in the Chairperson's book, but nothing in this section shall be held to affect the liability of the transferee for the payment of the said tax."

12. A reading of Section 74(4) indicates that one consequence of not giving notice is that the original owner continues to be liable for the payment of property tax either till he gives notice or "until the transfer has been recorded in the Chairperson's book." The other

section, i.e., relevant and which is sought to be relied upon by the Respondent NDMC is Section 77(3) which reads as under:

> "(3) Whoever omits to comply with any such requisition or fails to give true information or to make a true return to the best of his knowledge or belief, shall, in addition to any penalty to which he may be liable, be precluded from objecting to any assessment made by the Chairperson in respect of such land or building of which he is the owner of the occupier."

13. To this Court it appears that if the NDMC wants to rely on Section 77(3) it would have to concede that the Petitioner here is the owner or the occupier of the property in question, and if so acknowledges, the Respondent then obviously cannot question the locus of the Petitioner to challenge the assessment. However, as already noticed, the Respondent does challenge the locus of the Petitioner.

14. On the facts of the present case, it is clear that the NDMC, being a party to the Writ Petition (Civil) No. 982/2000 filed by the previous owner, was fully aware of the transfer of the separate portions of the property. The fact that the compounding fees in a sum of Rs. 4 lakhs by way of two challans dated 3.1.1989 was paid by the

Petitioner in respect of the property is also not denied. The fact that a notice in the name of the Petitioner was issued by it on 6.12.1993 seeking for information in respect of "your property no. 4 and 4-A" is also not denied.

15. Two other facts which are also not denied are that the assessment order in question was issued on 27.7.2001 which is subsequent to the purchase of the property in question by the Petitioner here. The other is that in respect of this assessment order dated 27.7.2001, the Petitioner filed objections on 3.8.2001. Nevertheless, without accounting for these objections, the Respondent issued a property tax bill dated 14.8.2001 fixing rateable value as Rs. 17,44,700, and requiring the Petitioner to pay Rs. 32,27,733 and the penalty of Rs. 1,04,683. This was for the year 2000-01. Another property tax bill dated 17.9.2001 demanding a sum of Rs. 17,44,700 with penalty of Rs. 1,04,683 was issued to the Petitioner. On the said bill, the Advisor (Revenue) made an endorsement stating that "This is under consideration. To pay admitted tax." Thereafter the Petitioner submitted a representation on 24.9.2001 and a letter dated 16.9.2002. Yet another property tax bill was issued on 3.9.2002 raising a demand of Rs. 4,73,410 and arrears of Rs. 33,16,903 for the period upto 31.3.2002 with penalty of Rs. 1,04,683. Thereafter the

impugned demand notice was issued on 10.1.2003 calling upon the Petitioner to pay Rs. 38,22,956 with penalty of Rs. 7,64,591.

16. The above narration, show that the property tax bills from time to time were being sent to the "Owner c/o M/s Decent Properties Pvt. Ltd., 4-A Prithvi Raj Road, New Delhi." There was information with the Respondent NDMC that in fact the Petitioner, Decent Properties Pvt. Ltd. was the transferee. Otherwise there is no explanation why the letter dated 6.12.1993 was issued to it and how the name of the Petitioner in any event figures in all these property tax bills. The Petitioner is right in contending that in terms of Section 74(4) of the Act, it must be held that the transfer has been acknowledged in the records of the NDMC and to use the language of the statute "the transfer has been recorded in the Chairperson's book." If indeed, the transfer had been recorded, the Respondent cannot take advantage of the decision of the Hon'ble Supreme Court in ***Trigon Investments*** (supra) where the Court was concerned with the DMC Act where the a provision similar to Section 74(4) does not appear to exist, and was in any event has not been discussed.

17. The facts of the present case also are not similar to the facts in the said decision in ***Trigon Investments*** (supra) where admittedly no

notice of the transfer whatsoever was given to the MCD. Yet another aspect to be considered here is that the assessment order dated 27.7.2001 which has formed the basis for all subsequent bills was issued admittedly without notice to the Petitioner. If as already held, the NDMC has deemed to have notice of such transfer then it cannot avoid compliance of Section 72(2) before finalising the assessment. The fact that the previous owner did not object to such assessment, makes no difference to this position. Because the assessment is being finalised subsequent to the date of the transfer, although the contention has been raised in the counter affidavit that "the assessment was finalised much prior in 1989 after giving notice under Section 65 of the Punjab Municipal Act in the name of the recorded owner. Nothing has been produced to show that the assessment was so finalised.

18. On the other hand, in the impugned assessment order dated 27.7.2001 it is mentioned that "the rateable value in respect of **sold out portions** is bifurcated as per direction of the Hon'ble High Court of Delhi in CWP No. 980/2000 subject to pending decision of notice under Section 72 of NDMC Act, 1994 issued on 19.3.2001." The above sentence makes two things clear. One that NDMC was aware of the individual portions had been "sold out". The name of the Petitioner is

also indicated in the impugned order. Therefore, NDMC had, by this time, notice of the transfer. Secondly, no notice appears to have been issued to the petitioner under Section 72(2) of the NDMC Act. If indeed the NDMC was aware of the sale of the portion in favour of the Petitioner, there is absolutely no justification for not issuing such notice to the Petitioner here.

19. The inescapable conclusion in the present case is that the Respondent was not justified in issuing the assessment order dated 27.7.2001 without notice to the Petitioner here under Section 72(2) of the Act. The Respondent will now proceed to correct its records to formally acknowledge the transfer of the property in the name of the Petitioner here in accordance with law. It is open to the Respondent to seek any such information that it wishes for this purpose from the Petitioner within a period of four weeks from today. Within two weeks from the date of issuance of the letter seeking such information, the Petitioner will furnish such information and comply with all necessary formalities.

20. The impugned assessment order and the bills are hereby set aside. The Respondent will now proceed to finalise the assessment in accordance with law after issuing a notice to the Petitioner in terms of

Section 72(2) of the Act. In order that this process does not take an unduly long time it is directed that the procedural steps in terms of the Act for finalising the assessment should be initiated and completed, and the assessment order will be issued with a period of not later than 4 months from today, i.e. not later than 20.8.2007. The amounts paid by the Petitioner so far would be adjusted in any future demand raised on the basis of such assessment. If aggrieved by such assessment, it will be open to the Petitioner to avail of the statutory remedy available to it,

21. With the above directions, the writ petition is allowed with no orders as to costs.

Sd/-
April 18, 2007 (S. Muralidhar)
ak Judge